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Preparatory Commission for the International Criminal Court

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Road map leading to the early establishment of the International Criminal Court

1. During the closing plenary meeting of the seventh session of the Preparatory Commission, in March 2001, the Chairman of the Preparatory Commission indicated that, given the rapid pace of ratifications and the considerable workload still to be accomplished, a road map would be presented to the Commission to assist it in the timely completion of its work. The present document has been prepared by the Bureau of the Commission and sets out its assessment of the most effective way to prepare for the establishment of the Court upon the entry into force of the Statute.

2. The road map outlines the documents and activities, including their sequence, needed for the smooth operation of the Assembly of States Parties and for the most efficient establishment of the Court, including its essential provisional internal rules. While it is likely that the sixtieth ratification of the Rome Statute will occur sometime within the next 12 months, its actual timing is unpredictable. The road map does not presume, therefore, to set out a specific timetable for the completion of these tasks. It is hoped, however, that this outline and the use of established mechanisms of the Preparatory Commission would enable it to complete the necessary tasks in a way that allows the Court to become functional as early as possible.

I. Sequencing of activities

3. The activities that have to be undertaken for the initial meetings of the Assembly of States Parties and the establishment of the Court consist of adopting the required documents and putting in place the key bodies and positions, both in the Assembly of States Parties and in the Court. This process begins with the deposit of the sixtieth instrument of ratification. In order to facilitate the early establishment of the Court the General Assembly, in the resolution adopted at its current session, should call upon the Secretary-General to notify States, to convene the first meeting and to make arrangements for the preparation and circulation of the relevant documents.

4. The Statute could enter into force at some point between 60 and 90 days after the deposit of the sixtieth instrument of ratification given the wording of article 126 of the Statute. The first session of the Assembly of States Parties would then be held, depending in large part on the heavy schedule of meetings at United Nations Headquarters.[1] The first session of the Assembly would commence with organizational steps such as the establishment of the Bureau and the election of its President. Following these steps, the Assembly would also have to adopt, inter alia, the nomination and election procedures for the judges and the Prosecutor. The Assembly will circulate letters inviting nominations, with sufficient time provided for the submission of such nominations. This function could be delegated to the Bureau. At the first session, the Assembly should also adopt the documents recommended by the Commission.

5. The subsequent session of the Assembly[2] could follow the first as soon as practicable, taking into account the availability of conference facilities and the

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completion of interim activities such as the preparation of documents and nomination processes.

6. The inaugural Meeting of the Court at which the judges and the Prosecutor will be sworn in, could be held shortly after the subsequent session of the Assembly of States Parties. The Court should then proceed with the election of the Presidency and the establishment of the Chambers. It would also be highly desirable for the Presidency to establish, as expeditiously as possible, a list of candidates for the position of Registrar and transmit it to the Assembly of States Parties for any recommendations the Assembly might wish to make.[3] The Court could then move expeditiously to elect the Registrar.

II. Preparation of documents and steps

7. The road map divides the tasks required to establish the Court into documents and steps needed for the smooth operation of the Assembly of States Parties and the timely establishment of the Court on the one hand, and the provisional internal rules and regulations of the Court on the other. The measures and documents needed for the smooth and efficient functioning of the Assembly of States Parties and the timely establishment of the Court will have to be adopted during the first session of the Assembly. The Preparatory Commission should therefore tackle these issues on a priority basis. The preparation of provisional internal rules and regulations of the Court could be acted on at the subsequent session of the Assembly of States Parties referred to in paragraph 5.

A. Documents and steps necessary for the smooth operation of the Assembly of States Parties and the timely establishment of the Court

8. A timely and efficient meeting of the Assembly of States Parties requires, in addition to the preparation of the texts explicitly listed in resolution F of the Final Act, the preparation of a number of documents in advance of such a meeting as well as the taking of a number of steps at an early stage of such a meeting. Below is the list of such documents and steps, some of which are already under preparation:

- An appropriate resolution by the General Assembly regarding the convening of the first session of the Assembly of States Parties;
- A draft agenda for the first session of the Assembly of States Parties;
- Preparations for the establishment of the Bureau and subsidiary bodies of the Assembly (e.g., Credentials Committee, Committee on Budget and Finance, etc.);
- Recommendations concerning the Secretariat of the Assembly of States Parties;
- Recommendations regarding nomination and election procedures for judges and the Prosecutor;
- Recommendations regarding financial regulations (e.g., victims fund; criteria for acceptance of voluntary contributions).

9. For a first draft of some of the documents that have not yet been prepared, the United Nations Secretariat could provide assistance. When the subject matters of the documents are closely related to the work of a particular working group, its coordinator could be entrusted with the preparation of the first draft. The Bureau, as appropriate, will make arrangements to address these issues.

B. Provisional internal rules and regulations of the Court

10. This section deals with the preparation and adoption of provisional internal rules and regulations which are needed to ensue a swift initiation of necessary operations of the Court during its initial period of existence.[4] In order to facilitate the establishment of the Court, the following provisional documents are considered to be the most necessary. It should be noted that existing precedents could be used with necessary adjustments to serve as the basis for the preparation of these documents. They fall into three categories:

(a) Human resources and administration

- Provisional staff regulations, including the drawing up of job descriptions, hiring, classification, promotion and dismissal rules as well as rules related to gratis personnel;

- Provisional rules determining remuneration and benefits, including social security, pension systems, health insurance and other benefits;
- Provisional code of conduct (for all staff and as well as defence counsel);
- Provisional rules governing the assignment, remuneration and benefits for defence counsel (directive on legal aid).

(b) Budgetary and finance

- Provisional financial rules;
- Provisional procurement rules.

(c) Operational issues

- Provisional security rules, including: rules for the detention unit; security for investigations; security for VIPs abroad; courtroom, building information and personnel security; field operations and field office security as well as information/communication security including information classification protocols; security liaison functions and training and standards for security officers;
- Provisional rules for investigation protocols and archival systems, including handling of evidence;
- Provisional rules on detention, including rules governing communicating with accused;
- Provisional media and outreach rules and functions;
- Provisional rules on victims and witnesses, including logistics, allowances, information, support services, security arrangements, participation and reparations.

11. These provisional documents are necessary to enable the Court to begin functioning on a sound basis upon the election of its principal officers (Presidency, Prosecutor and Registrar). In keeping with established practice, the Chairman of the Preparatory Commission is appointing focal points who will be responsible for coordinating the preparation of initial draft texts. Given the rapid pace of ratifications, it would also be useful to follow the past practice of inter-sessional open-ended experts meetings in order to facilitate the work of the Commission.

III. Interlocutor mechanism with the host country

12. The management of practical issues regarding the establishment of the Court suggests the need for the establishment of an interlocutor mechanism between the Preparatory Commission and the host country. In addition to the permanent premises, questions related to the interim premises and infrastructure will have to be discussed and provided for before the Court is established. The established practice of the Commission of using a focal point will be employed to carry out this interlocutor function. Continuous contact with the host Government would be necessary to deal with these issues. Since this will likely be time-consuming, it is further envisaged that a subcommittee of the Bureau would act as the Commission's focal point in this regard. The Bureau will keep the Commission informed on the developments regarding host country issues.

Notes

[1] The Rome Statute in article 112 (6) also makes it possible for the first session of the Assembly of States Parties to be held at the seat of the Court.

[2] A subsequent session of the Assembly may be convened as a resumed session of the first or as a special session, in accordance with the Statute and the Rules of Procedure of the Assembly of States Parties.

[3] This may require a further meeting of the Assembly.

[4] The preparation of drafts of permanent internal rules and regulations lies outside the Preparatory Commission's mandate and capacity, being the responsibility, under the Statute of the principal officers of the Court.